



Ohio Environmental Protection Agency

Division of Hazardous Waste Management

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FAX TRANSMISSION COVER SHEET

Date: 3/25/99

To: Arlene Lilly USEPA R5

Fax: 312-353-9116

Re: Dayton Electroplate

Sender: John Schierber

YOU SHOULD RECEIVE 8 PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (614) 644-2917.

Message: Read this over and let me know. If you still want a letter
we can do that no problem.

Thank for follow up
John

From: John Schierberl
To: Elisabeth Rothschild, Harry Sarvis, Pam Allen, ...
Date: March 17, 1999 (Wednesday) 2:06 PM
Subject: Mr. Borum

Randy,

This message is for you but everyone cc'd has an interest so I thought email best, so sit back and enjoy the ride through Mr. Borum's world:

I talked to Dave Taylor in Dayton Adult Probation about Borum's terms of probation (Lori sent us a copy). They do not specify a condition that Borum cooperate or anything else in on-going efforts to address his mess. As you know at the time everyone assumed Dayton would take possession and access would not be an issue. Dave suggested once we're satisfied Borum is not going to respond to your 03/05 letter re: access to the site for sampling, we should contact Borum's attorney. But as we all know Mr. Borum may not be viewed as a particularly good client so he may not have an atty anymore. Remember he IS an attorney? So I followed up with Lori Massey and then Bob Cochran at AGO, civil and criminal attys respectively. Here's a plan: Give Borum another week to respond to the certified letter he signed for unless you've got some other timeline built into it. If he responds affirmatively, we're set. If he has not responded by 03/25/99, we'll contact Bob Cochran at AG, who has agreed to try contacting the attorney of record for Borum to ascertain whether he is still representing Borum on these matters. If not, Bob will follow-up with Borum himself and try to get us the access needed. He may need to talk to you at some point to discuss timing etc. If Borum then agrees and cooperates, we're set. If not, Bob could approach the judge re: the probation order which, even though it does not specifically condition his cooperation, reading the full order one could make a legal argument that he is in fact required to not "engage in an offensive course of conduct" or some such thing. If the judge gets involved and orders or otherwise gets Borum to provide access, we're set. But, if that doesn't work or if it will take too long to engage, we have the administrative search warrant option for access as our ultimate trump. All of this will take allot of everyone's time but welcome to Mr. Borum's world (Elisabeth quit grinding your teeth). I have to ask whether we've asked the old trustee if he still has a key to the place and whether that might be a simple way to get in? As to the sampling question, which started this whole process, I understand that DERR has a workplan for additional site-wide sampling to supplement the Integrated Assessment performed by DERR at the time of the fed removal. The IA scored significantly enough to warrant a more expanded site investigation. The workplan is subject to fed review (they're funding as part of a Brownfield Pilot Project v. a straight Superfund ranking in part due to Dayton's concerns). SWDO DERR and DHWM have discussed DHWM's limited sampling needs related to closure of the old storage area, and the sampling is incorporated into this workplan. If feds sign-off on it, we're set. If they don't accept the RCRA samples as appropriate under this CERCLA action, DHWM is faced with perhaps accessing the Borum trust fund to do the closure sampling or however much the money will cover. The remaining question, as I prepare to close this oration, is whether fed CERCLAs are going to pursue full cost recovery from Borum re the removal and/or the additional site investigation etc. I am attempting to find out who in Chicago would have that piece of information and will follow-up. If I can't find anyone I go back to Renninger and try to figure it out. I understand these types of cost recoveries are backlogged but hopefully we can at least get an intent to pursue or not. If they are going to bare their teeth and seek cost recovery from Borum, or not (remember Borum still seemsto have pretty limited assets), DHWM will have to decide whether we should use the trust fund, and when, to do our sampling. I will track this over the next couple weeks and keep in touch with Randy. Bob's agreed to help as needed, as has Dave Taylor from Adult Probation, both of whom went out of their way to help us put this together quickly. Thanks to Lori also for guiding us onto the right road initially..... So Randy, when Borum fails to respond let's hook up with Bob Cochran and we'll go from there.....If any one has related concerns, questions, or better options please let me know.....John

CC: Interent:LMASSEY@ag.ohio.gov

Dayton Electroplate Case Update to CAS/EU Files
03/17/99

The question remains how to get DHWM Closure related concerns addressed.

Talked to ER, referred me to Randy Waterworth/SWDO DERR. See 03/17 email.

Additional detail not in email that might be needed later

Dave Taylor, Adult Probation (familiar with Borum): 937-496-6824.

Said we could ask judge to amend probation but doesn't sound too attractive. Discussed with Bob who agreed.

Borum did sign for the 03/05 certified letter, no response.

Dayton did not want site to hit CERCLIS and the Brownfield Pilot (state) evolved.

From: "Lori A. Massey" <lmMassey@ag.ohio.gov>
To: Central-Office.DHWM(JSCHIERB)
Date: February 20, 1999 (Saturday) 12:04 PM
Subject: Dayton Electroplate Update

Last week I talked to the City of Dayton and learned that the city is not going to purchase and clean up the property. Last Friday, I filed a motion to withdraw the state's objection to abandonment of the property by the bankruptcy trustee. I called the city and the trustee to let them know about our motion and to tell them that we would not attend the hearing. Last Tuesday, the hearing on abandonment was held and the property probably reverted back to Borum. I should get a notice/ruling from the court next week. Also last Tuesday, I talked to the adult probation department about the money for the clean up and to see if the probation order was worded in a fashion that would allow the state to do the sampling and clean up with the money from the escrow account (so far \$4,000.00). The order is worded so that anyone who does the cleanup will be paid. If you like, I can have a copy sent to you. Can the state do the cleanup if reimbursed (I believe bills can be sent directly to the probation department and they will pay them) from the probation escrow account? Also, after the property is clean, will USEPA attach it for their cost recovery. If we do the cleanup, USEPA should be made aware of the situation so that they can proceed however they wish.

CC: "Bryan F. Zima" <bzima@ag.ohio.gov>

Cell into Sherard re DCP report, asked he r/c and if he hadn't and still needed to ask Steele if I would do it when I talk to him re: Borum and

DEL

3/17/99 asked Bob Smith RS/RCA if he could help get me connected to correct CERCLA/CRA Admin office or staff.

FILED
COURT OF COMMON PLEAS

98 NOV 24 AM 9:42

CRAIG ZIMMERS
CLERK OF COURTS

THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

THE STATE OF OHIO, PLAINTIFF

Case No. 97-CR-3587

-VS-

ORDER OF PROBATION

CHARLES J. BORUM

Effective Date: October 6, 19 98

Defendant

The defendant, named above, appeared with his attorney before this Court on the 6th day of October, 19 98, and guilt having been established to the charge of ILLEGAL STORAGE OF HAZARDOUS WASTE: CRIMINAL ENDANGERING (MI), the Court referred the defendant to the Probation Department for a Presentence Investigation, a report of which has been delivered to the Court.

It appearing to the Court that the defendant has agreed to abide by the General Rules of this Court for Probationers, which are part of this Order, and that the defendant is not likely to again engage in an offensive course of conduct, and that the public good does not require that he be immediately confined, it is ordered that execution of the sentence of Three (3) years CRC; Sixty (60) days OHRC (deferred) be suspended, and that the defendant be placed on probation for a period of up to three years under the control and supervision of the Department of Probation of this Court from the date of disposition in the above listed case, subject to the General Conditions of this Court for Probationers and upon the following:

SPECIFIC CONDITIONS

1. A requirement that the offender return to Dayton by 10-20-98. *Completed*
2. A requirement that the offender pay court costs. *provided*
3. A term of 200 hours community service work (bulk in Montgomery County at least 150 hours)
4. A requirement that the offender pay 15,000 fine and \$250 fine on misdemeanor (1,000 due by 10-22-98).
5. A requirement that the offender pay reasonable cost of sampling test and any other cost remaining. (at the site)
6. A requirement that the offender establish an escrow fund subject to removal with permission of Court. First payment of \$2500 due by 10-31-98, and monthly payments of \$200 for clean up. (may get credit against \$15,000 or partial payment)

Prescribed method of payment (ORC 2949.111(B)):

1. The defendant is ordered to pay restitution in the sum of \$ None
2. The defendant is ordered to pay costs of prosecution taxed at \$ 330.82
3. The defendant is ordered to pay a fine of \$ 15,250.00
4. The defendant is ordered to pay a probation fee of \$ 50.00

ACCEPTED:

Charles Borum
Defendant4712 Harbortown Lane
Address FORT MEYERS FL 33919

APPROVED:

Judge PATRICK J. FOLEY

tb 11-23-98 (Hawk)

MAR-25-99 THU 11:39

OHIO EPA OPP#DHWM

FAX NO. 6147281245

P.06

ID-614+60 1926

PAGE 3/4

MAR-04-99 08:37 FROM-ATT GENERAL/EEB

FILED
COURT OF COMMON PLEAS

98 OCT 29 PM 2:59

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CRIMINAL DIVISION

CASE NO.: 97-CR-3587

Plaintiff

TERMINATION ENTRY

CHARLES J. BORDUM

CONVICTED OF: ILLEGAL STORAGE OF
HAZARDOUS WASTE AND
CRIMINAL ENDANGERING

Defendant

On OCTOBER 6, 1998, the defendant herein appeared in open Court with Counsel for sentencing, the Court having received a written report of a pre-sentence investigation submitted by the Adult Probation Department of this Court.

WHEREFORE, it is the JUDGMENT and SENTENCE of the Court that the defendant herein be delivered to THE CORRECTIONAL RECEPTION CENTER and there be imprisoned and confined for a term of THREE (3) YEARS FOR THE OFFENSE OF ILLEGAL STORAGE OF HAZARDOUS WASTE; AND TO A TERM OF SIXTY (60) DAYS TO BE SERVED AT THE DAYTON HUMAN REHABILITATION CENTER FOR THE OFFENSE OF CRIMINAL ENDANGERING; THE DEFENDANT IS TO PAY A FINE IN THE AMOUNT OF \$15,000.00 THROUGH THE ADULT PROBATION DEPARTMENT; and further that defendant pay costs of prosecution taxed at \$ 330.82 upon which execution is hereby awarded, through the Adult Probation Department of this Court unless otherwise specified.

Imprisonment is SUSPENDED and defendant is placed on probation for a period not to exceed THREE (3) year(s) under the supervision of the Adult Probation Department of this Court. Defendant shall be subject to the general rules of this Court for Probationers and such additional specific orders as have been or shall be imposed by this Court or Adult Probation Department of this Court. If applicable in this case, the defendant is hereby ORDERED to make complete restitution.

THE DEFENDANT IS TO SERVE SIXTY (60) DAYS AT THE DAYTON REHABILITATION CENTER AT THE DISCRETION OF THE MONTGOMERY COUNTY ADULT PROBATION DEPARTMENT.

The Court did fully explain to the defendant their appellate rights and defendant informed the Court that said rights were understood.

Defendant is sentenced and placed on probation under the provisions of Section(s) 3734.02(F) AND 2909.06(A) and 2951.02 O.R.C.

Hon. PATRICK J. FOLEY

JUDGE PATRICK J. FOLEY

Prepared by Montgomery County Prosecutor's Office/JEC
Assistant Prosecuting Attorney: BRAD L. TAMMARO, ASSISTANT ATTORNEY GENERAL
Defense Counsel: DAVID WILLIAMSON, 400 NATIONAL CITY CTR., DAYTON, OHIO 45402-1908
Caseflow Services

Subscribed and sworn to before me this 5th day of Nov 1998.
Clerk of Common Pleas
Court of Montgomery County, Ohio
By: [Signature]

From: Paul Pardi
To: John Schierberl, Pam Allen
Date: February 26, 1999 (Friday) 9:24 AM
Subject: Re: Fwd: Dayton Electroplate Update

I'm not sure how to respond to Lori's e-mail. There are possibly some things we could do with the money, although \$4,000 won't go too far. We should probably caucus on this to determine the proper course of action. Let me know if you want to set up a call with all interested parties.

>>> Pam Allen 02/24 12:59 PM >>>

Whar does SWDO (P.Pardi) think?

CC: Harry Sarvis

Dayton Electroplate Inc.
Case No. 97-CR-3587
State of Ohio
V. Charles Borum

9/28/98

On 9/21/98 a trial was to commence before Judge Patrick Foley in the Court of Common Pleas Montgomery County, Ohio concerning Dayton Electroplate. Mr. Charles Borum elected not to show.

On 9/25/98 at 1:15 pm Charles Borum appeared before Judge Foley and plead no contest to the indictment. Judge Foley found him guilty on two counts, illegal storage, felony and criminal endangerment, first degree misdemeanor.

Sentencing will be at 1:30 pm on 10/6/98 before Judge Foley in Dayton.

AG's drafting pre-sentencing brief/review, probably going to be strongly against any leniency based on case specifics.